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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,899	03/12/2004	Stefan Bengtsson	2024071-7005362002	8311
7590	09/07/2005			
David G. Beck Bingham McCutchen LLP 18th Floor Three Embarcadero Center San Francisco, CA 94111			EXAMINER WALLING, MEAGAN S	
			ART UNIT 2863	PAPER NUMBER
DATE MAILED: 09/07/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/799,899

Applicant(s)

BENGTSOON, STEFAN

Examiner

Meagan S. Walling

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,19 and 21-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21 is/are allowed.
- 6) ☒ Claim(s) 1,2,22,26,28,34-36 and 41-43 is/are rejected.
- 7) ☒ Claim(s) 19,23-25,27,29-33,37-40 and 44-46 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3/12/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1, 2, and 22 are finally rejected under 35 U.S.C. 102(e) as being anticipated by Vaudrey et al. (US 6,396,930).

Regarding claim 1, Vaudrey et al. teaches a plurality of speakers (column 6, line 13); and an audiometer (96) coupled to the plurality of speakers, the audiometer configured for performing auditory diagnosis tests (column 4, line 32) and for calibrating the plurality of speakers to compensate for environmental differences (column 1, lines 60-64).

Regarding claim 2, Vaudrey et al. teaches at least one test probe (95); a diagnostic subsystem coupled to the at least one test problem the diagnostic subsystem adapted to implement at least one auditory diagnostic test (column 5, lines 25-32); input means adapted to accept commands from a user (Ref. 11 and 18); a display adapted to display results from the at least one auditory diagnostic test (column 11, line 6); and at least one processor coupled to the diagnostic subsystem and to the input means (column 11, line 7).

Regarding claim 22, Vaudrey et al. teaches that the environmental differences comprise differences in environmental acoustics and/or speaker placement (column 1, lines 60-64).

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2. Claims 26, 28, 34-36 and 41-43 are finally rejected under 35 U.S.C. 102(e) as being anticipated by Keller (US 2004-0037428).

Regarding claim 26, Keller teaches arranging a plurality of speakers (307a, 307b) within a testing room remote from an intended listener/patient position (305); coupling the plurality of speakers to an audiometer (par 17); and calibrating the arranged plurality of speakers (par. 4).

Regarding claim 28, Keller teaches that the plurality of speakers is automatically calibrated by the audiometer (par 4).

Regarding claim 34, Keller teaches operating the audiometer to perform auditory tests (see abstract).

Regarding claim 35, Keller teaches a testing room (par. 17); a plurality of speakers (307a, 307b) arranged within the testing room remote from an intended listener/patient position (305); and an audiometer coupled to the plurality of speakers, the audiometer configured for performing diagnostic tests (see abstract) and for calibrating the plurality of speakers (par. 4).

Regarding claim 36, Keller teaches at least one test probe (par. 32); a diagnostic subsystem coupled to the at least one test problem the diagnostic subsystem adapted to implement at least one auditory diagnostic test (par. 31); input means adapted to accept commands from a user (par. 31); a display adapted to display results from the at least one auditory diagnostic test (par. 31); and at least one processor coupled to the diagnostic subsystem and to the input means (par. 31).

Regarding claim 41, Keller teaches a plurality of speakers (par. 9); an audiometer coupled to the plurality of speakers, the audiometer configured for performing auditory

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diagnostic tests (par. 9); and a test probe coupled to the audiometer, the probe having a memory for storing information (par. 9).

Regarding claim 42, Keller teaches that the audiometer is configured for calibrating the plurality of speakers (par. 4).

Regarding claim 43, Keller teaches at least one test probe (par. 32); a diagnostic subsystem coupled to the at least one test problem the diagnostic subsystem adapted to implement at least one auditory diagnostic test (par. 31); input means adapted to accept commands from a user (par. 31); a display adapted to display results from the at least one auditory diagnostic test (par. 31); and at least one processor coupled to the diagnostic subsystem and to the input means (par. 31).

#### *Allowable Subject Matter*

3. Claims 19, 23-25, 27, 29-33, 37-40, and 44-46 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

The primary reason for the indication of allowability of claim 19 is the inclusion of the limitation that the plurality of speakers comprises at least five speakers. It is this limitation in the claimed combination that has not been found, taught, or suggested by the prior art of record that makes these claims allowable.

The primary reason for the indication of allowability of claim 23 is the inclusion of the limitation that the audiometer is configured for calibrating the plurality of speakers by obtaining

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proper individual speaker level settings and/or time delays. It is this limitation in the claimed combination that has not been found, taught, or suggested by the prior art of record that makes these claims allowable.

The primary reason for the indication of allowability of claim 24 is the inclusion of the limitation of a microphone coupled to the audiometer, wherein the audiometer is configured for emitting sound through each of the plurality of speakers, the microphone is configured for receiving the sound, and the audiometer is configured for calibrating individuals of the plurality of speakers. It is this limitation in the claimed combination that has not been found, taught, or suggested by the prior art of record that makes these claims allowable.

The primary reason for the indication of allowability of claim 29 is the inclusion of the limitation that the plurality of speakers is calibrated to compensate for speaker misplacement. It is this limitation in the claimed combination that has not been found, taught, or suggested by the prior art of record that makes these claims allowable.

The primary reason for the indication of allowability of claim 30 is the inclusion of the limitation that the speaker calibrating comprises obtaining proper individual speaker level settings and/or time delays. It is this limitation in the claimed combination that has not been found, taught, or suggested by the prior art of record that makes these claims allowable.

The primary reason for the indication of allowability of claim 31 is the inclusion of the limitation of coupling a microphone to the audiometer; emitting sound through each of the plurality of speakers; receiving the sound with the microphone; and calibrating individuals of the plurality of speakers based on the received sound. It is this limitation in the claimed combination

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that has not been found, taught, or suggested by the prior art of record that makes these claims allowable.

The primary reason for the indication of allowability of claim 37 is the inclusion of the limitation that the plurality of speakers comprises a first pair of speakers in front of and to either side of the listener/patient position, a second pair of speakers behind and to either side of the listener/patient position, and a speaker directly in front of the listener/patient position. It is this limitation in the claimed combination that has not been found, taught, or suggested by the prior art of record that makes these claims allowable.

The primary reason for the indication of allowability of claim 38 is the inclusion of the limitation that the audiometer is configured for calibrating the plurality of speakers by obtaining proper individual speaker level settings and/or time delays. It is this limitation in the claimed combination that has not been found, taught, or suggested by the prior art of record that makes these claims allowable.

The primary reason for the indication of allowability of claim 39 is the inclusion of the limitation of a microphone coupled to the audiometer, wherein the audiometer is configured for emitting sound through each of the plurality of speakers, the microphone is configured for receiving the sound, and the audiometer is configured for calibrating individuals of the plurality of speakers based on the received sound. It is this limitation in the claimed combination that has not been found, taught, or suggested by the prior art of record that makes these claims allowable.

The primary reason for the indication of allowability of claim 44 is the inclusion of the limitation that the information comprises probe calibration information and/or probe

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configuration information. It is this limitation in the claimed combination that has not been found, taught, or suggested by the prior art of record that makes these claims allowable.

4. Claim 21 is allowed.

The following is an examiner's statement of reasons for allowance: Please see previous office action for reasons for allowance.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

#### *Response to Arguments*

Applicant's arguments with respect to claims 1 and 2 have been considered but are moot in view of the new ground(s) of rejection.

#### *Conclusion*

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after



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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

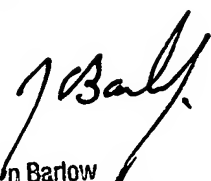
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Meagan S. Walling whose telephone number is (571) 272-2283. The examiner can normally be reached on Monday through Friday 8:30 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on (571) 272-2269. The fax phone number for the organization where this application or proceeding is assigned is ~~703-872-9306~~ <sup>571-273-8300</sup>.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

msw

~~BRYAN BUI~~  
PRIMARY EXAMINER

  
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Supervisory Patent Examiner  
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